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HOUSE BILL 163

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

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AN ACT

RELATING TO PAIN MANAGEMENT; AMENDING THE PAIN RELIEF ACT;
PROVIDING RESPONSIBILITIES FOR THE NEW MEXICO MEDICAL BOARD AND
OTHER HEALTH PROFESSIONAL LICENSING BOARDS; ESTABLISHING
CRITERIA FOR CERTAIN ACTIONS; CREATING THE PAIN MANAGEMENT
ADVISORY COUNCIL; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 24-2D-2 NMSA 1978 (being Laws 1999,
Chapter 126, Section 2) is amended to read:

"24-2D-2. DEFINITIONS. --As used in the Pain Relief Act:

A. "accepted guideline" means a care or practice
guideline for pain management developed by ~~the~~ an American
pain society, ~~the~~ an American ~~geriatric~~ geriatrics society,
the agency for health care ~~policy the~~ research and quality, a
national cancer pain ~~initiatives~~ initiative or any other

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1 nationally recognized clinical or professional association, a
2 [~~speciality~~] specialty society or government-sponsored agency
3 that has developed practice or care guidelines based on
4 original research or on review of existing research and expert
5 opinion whose guidelines have been accepted by the New Mexico
6 medical board [~~of medical examiners~~] and other boards of health
7 care providers with prescriptive authority;

8 B. "board" means the licensing board of a health
9 care provider;

10 C. "clinical expert" means a person who by reason
11 of specialized education or substantial relevant experience in
12 pain management has knowledge regarding current standards,
13 practices and guidelines;

14 D. "disciplinary action" means [~~any~~] a formal
15 action taken by a board against a health care provider, upon a
16 finding of probable cause that the health care provider has
17 engaged in conduct that violates [~~the Medical Practice Act~~] his
18 respective board's practice act;

19 E. "health care provider" means a person licensed
20 or otherwise authorized by law to provide health care in the
21 ordinary course of business or practice of his profession and
22 to have prescriptive authority within the limits of [~~their~~] his
23 license;

24 F. [~~"intractable pain" means a state of pain, even~~
25 ~~if recurring, in which reasonable efforts to remove or remedy~~

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1 ~~the cause of the pain have failed or have proven inadequate]~~
2 "pain" means a condition of bodily sensation of serious
3 physical discomfort that requires the services of a health care
4 provider to alleviate, including discomfort that is persistent
5 and chronic in duration; and

6 G. "therapeutic purpose" means the use of
7 pharmaceutical and non-pharmaceutical medical treatment that
8 conforms substantially to accepted guidelines for pain
9 management. "

10 Section 2. Section 24-2D-3 NMSA 1978 (being Laws 1999,
11 Chapter 126, Section 3) is amended to read:

12 "24-2D-3. DISCIPLINARY ACTION-- EVIDENTIARY
13 REQUIREMENTS. --

14 A. No health care provider who prescribes,
15 dispenses or administers medical treatment for the purpose of
16 relieving [~~intractable~~] pain and who can demonstrate by
17 reference to an accepted guideline that his practice
18 substantially complies with that guideline and with the
19 standards of practice identified in Section [~~4 of the Pain~~
20 ~~Relief Act~~] 24-2D-4 NMSA 1978 shall be [~~subject to~~
21 ~~disciplinary~~] disciplined pursuant to board action or criminal
22 prosecution, unless the showing of substantial compliance with
23 an accepted guideline by the licensee is rebutted by testimony
24 of at least two unaffiliated clinical [~~expert testimony. If no~~
25 ~~currently accepted guidelines are available, then~~] experts

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1 prior to initiation of the action. Rules issued by the board
2 may serve the function of such guidelines for purposes of the
3 Pain Relief Act. The board rules [~~must~~] shall conform to the
4 intent of that act. Guidelines established primarily for
5 purposes of coverage, payment or reimbursement do not qualify
6 as an "accepted guideline" when offered to limit treatment
7 options otherwise covered within the Pain Relief Act.

8 B. In the event that a disciplinary action or
9 criminal prosecution is pursued, the board or prosecutor shall
10 produce clinical expert testimony supporting the finding or
11 charge of violation of disciplinary standards or other legal
12 requirements on the part of the health care provider. A
13 showing of substantial compliance with an accepted guideline
14 [~~can~~] may only be rebutted by clinical expert testimony.

15 C. The provisions of this section [~~shall~~] apply to
16 health care providers in the treatment of [~~all patients for~~
17 ~~intractable~~] pain, regardless of [~~the patients'~~] a patient's
18 prior or current chemical dependency or addiction. [~~The~~] Each
19 board [~~may develop and issue~~] shall adopt rules establishing
20 standards and procedures for the application of the Pain Relief
21 Act to the care and treatment of chemically dependent
22 individuals.

23 In an action brought by a board against a health
24 care provider based on treatment of a patient for pain, the
25 board shall consider the totality of the circumstances and may

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1 not use as the sole basis of the action:

2 (1) a patient's age;

3 (2) a patient's diagnosis;

4 (3) a patient's prognosis;

5 (4) a patient's history of drug abuse;

6 (5) the absence of consultation with a pain
7 specialist; or

8 (6) the quantity of medication prescribed or
9 dispensed. "

10 Section 3. A new section of Chapter 24, Article 2D NMSA
11 1978 is enacted to read:

12 "[NEW MATERIAL] PAIN MANAGEMENT ADVISORY COUNCIL CREATED--
13 DUTIES. --

14 A. The "pain management advisory council" is
15 created and shall be administratively attached to the
16 department of health. Members of the council shall be
17 appointed by the governor to consist of one representative each
18 from the New Mexico medical board, the board of nursing, the
19 board of pharmacy, the board of osteopathic medical examiners,
20 the board of acupuncture and oriental medicine, the university
21 of New Mexico health sciences center, a statewide medical
22 association, a statewide association of pharmacists, a
23 statewide association of nurse practitioners and a statewide
24 association of osteopathic physicians; one person who is a
25 consumer health care advocate; and three persons who have no

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1 direct ties or pecuniary interest in the health care fields.

2 B. The council shall meet at least quarterly to
3 review current pain management practices in New Mexico and
4 national pain management standards and educational efforts for
5 both consumers and professionals and shall recommend pain
6 management guidelines for each health care profession licensed
7 in New Mexico with prescriptive authority to its respective
8 board. Members who are not public employees shall receive per
9 diem and mileage as provided in the Per Diem and Mileage Act.
10 Public employee members shall receive mileage from their
11 respective employers for attendance at council meetings. "

12 Section 4. A new section of Chapter 24, Article 2D NMSA
13 1978 is enacted to read:

14 "[NEW MATERIAL] PAIN MANAGEMENT CONTINUING EDUCATION
15 REQUIRED. --A board shall require pain management continuing
16 education for all health care providers who have prescriptive
17 authority and who treat patients for pain. "

18 Section 5. Section 61-6-5 NMSA 1978 (being Laws 1973,
19 Chapter 361, Section 2, as amended) is amended to read:

20 "61-6-5. DUTIES AND POWERS. --The board shall:

21 A. enforce and administer the provisions of the
22 Medical Practice Act, the Physician Assistant Act, the
23 Anesthesiologist Assistants Act and the Impaired Health Care
24 Provider Act;

25 B. adopt, publish and file, in accordance with the

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1 Uniform Licensing Act and the State Rules Act, all rules for
2 the implementation and enforcement of the provisions of the
3 Medical Practice Act, the Physician Assistant Act, the
4 Anesthesiologist Assistants Act and the Impaired Health Care
5 Provider Act;

6 C. adopt and use a seal;

7 D. administer oaths to all applicants, witnesses
8 and others appearing before the board, as appropriate;

9 E. take testimony on matters within the board's
10 jurisdiction;

11 F. keep an accurate record of all its meetings,
12 receipts and disbursements;

13 G. maintain records in which the name, address and
14 license number of all licensees shall be recorded, together
15 with a record of all license renewals, suspensions,
16 revocations, probations, stipulations, censures, reprimands and
17 fines;

18 H. grant, deny, review, suspend and revoke licenses
19 to practice medicine and censure, reprimand, fine and place on
20 probation and stipulation licensees and applicants in
21 accordance with the Uniform Licensing Act for any cause stated
22 in the Medical Practice Act and the Impaired Health Care
23 Provider Act;

24 I. hire staff and administrators as necessary to
25 carry out the provisions of the Medical Practice Act;

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1 J. have the authority to hire or contract with
2 investigators to investigate possible violations of the Medical
3 Practice Act;

4 K. have the authority to hire a competent attorney
5 to give advice and counsel in regard to any matter connected
6 with the duties of the board, to represent the board in any
7 legal proceedings and to aid in the enforcement of the laws in
8 relation to the medical profession and to fix the compensation
9 to be paid to such attorney; provided, however, that such
10 attorney shall be compensated from the funds of the board;

11 L. establish continuing medical education
12 requirements for licensed physicians and continuing education
13 requirements for physician assistants;

14 M. establish committees as it deems necessary for
15 carrying on its business; [~~and~~]

16 N. hire or contract with a licensed physician to
17 serve as medical director and fulfill specified duties of the
18 secretary-treasurer;

19 O. establish and maintain pain management
20 guidelines, including review of national standards for pain
21 management; and

22 P. require pain management continuing medical
23 education for all practitioners. "

24 Section 6. APPROPRIATION. -- Twenty-five thousand dollars
25 (\$25,000) is appropriated from the general fund to the

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1 department of health for expenditure in fiscal year 2005 for
2 the purpose of supporting the work of the pain management
3 advisory council. Any unexpended or unencumbered balance
4 remaining at the end of fiscal year 2005 shall revert to the
5 general fund.

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